

No. 81236-5

SANDERS, J. (concurring)—I have signed the majority opinion; however, I write separately to urge the judiciary to take a more proactive role to facilitate the appointment of effective counsel for indigent criminal defendants. Here the appointed attorney was obviously out of compliance with the standards endorsed by the Washington State Bar Association referenced in RCW 10.101.030. *See* Wash. State Bar Ass'n, *Standards for Indigent Defense Services* (2007), <http://www.wsba.org/lawyers/groups/committeeonpublicdefense.htm>. Just because a county attempts to balance its budget on the backs of indigent criminal defendants is no reason for the court to facilitate this constitutional violation by appointing lawyers who are not in a position to get the job done. Moreover I would argue violation of these standards by appointed counsel should be regarded as prima facie evidence of ineffectiveness.

*State v. Wilson*, 144 Wn. App. 166, 181 P.3d 887 (2008), also illustrates the problem. In that case the court appointed the public defender for Asotin County to represent the defendant. The public defender made a request to appoint either a cocounsel or a lead counsel because she had been a member of the bar only two years,

had no felony trial experience, and did not have the experience necessary to be sole counsel. “The court denied the motion, expressing concern for the ‘thousands upon thousands upon thousands of dollars’ Asotin County would have to pay if experienced counsel was appointed.” *Id.* at 178 (quoting Report of Proceedings at 7).

Later in the proceeding, the appointed attorney filed a motion to withdraw based largely on the court’s denial of her motion for cocounsel. “She stated she was ‘overwhelmed and unable to shoulder this burden alone’” (quoting Clerk’s Papers at 107) and “explained that she did not have the resources or experience to deal with a case of this size.” *Id.* at 178-79. Eighteen days before trial the court appointed cocounsel; however that did not provide a reasonable time for investigation and preparation. The Court of Appeals held: “financial concerns should not be used as a justification for inhibiting the constitutional rights of criminal defendants.” *Id.* at 180. Although the Court of Appeals did not reach the issue of ineffective assistance of counsel because it reversed the conviction on other grounds, the situation remains most problematic and illustrates a systemic failure.

The judiciary should accept no shortcuts when it comes to discharging its constitutional obligation to appoint effective attorneys to represent indigent criminal defendants. If no such attorney is to be found because adequate funding is not available, then no attorney should be appointed and the case dismissed. It is not up to the judiciary to tax or appropriate funds; these are legislative decisions. However, it *is*

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up to the judiciary to facilitate a fair proceeding with effective appointed counsel if  
there is to be one.

I concur.

AUTHOR:

Justice Richard B. Sanders

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WE CONCUR:

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